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IN THE
Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS.

**BRIEF ON BEHALF OF THE NATIONAL LIVE STOCK
PRODUCERS ASSOCIATION AND CHICAGO PRO-
DUCERS COMMISSION ASSOCIATION, INTER-
VENERS.**

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February 26, 1952.

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VENERS.**

PRELIMINARY STATEMENT.

This case involves a direct appeal from an order and decree of the District Court, that dismissed appellant's complaint seeking to enjoin, set aside, and annul a report and order of the Interstate Commerce Commission (*Swift & Co. v. Atchison, T. & S. Fe Ry. Co.*, 274 I. C. C. 557).

In that case appellant sought to have its direct shipments of live stock delivered at its private side track at a

proposed private stock yard at the line-haul rates applicable to centralized delivery of shipments at the public stock yard at Chicago.

The principal findings of the Commission in the case on appeal here are:

“(1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of live stock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference, and

(2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest” (274 I. C. C. 557, 576).

STATEMENT OF FACTS AND STATUTES INVOLVED.

For the purpose of this brief, interveners herein adopt the statements found in the brief for the United States and that of the defendant railroads for a more complete statement of facts and statutes involved with respect to the opinion of the District Court below and the decision of the Interstate Commerce Commission.

POSITION OF PRODUCER INTERVENERS.

In the interest of its live stock producer members and in the general public interest, the intervener live stock associations seek to preserve the efficiency and economy and all other advantages incident to the centralized delivery of all shipments of live stock at the public stock yards at Chicago, whether consigned for sale on the public market, or shipped direct to packers in the Chicago stock yards area, and contend that the decision and order of the Interstate Commerce Commission under attack here are supported by substantial evidence, are otherwise lawful and are within the proper exercise of the powers conferred on it by the Congress under provisions of the Interstate Commerce Act.

The Chicago Producers Commission Association and the National Live Stock Producers Association intervened in opposition to the complaint of the appellant before the Commission, and, consequently, have so intervened in the action before this Court.

The Chicago Producers Commission Association is a co-operative association of approximately 40,000 live stock producers. It is incorporated under the laws of the State of Illinois, and its principal office is located at the Union Stock Yards in Chicago. In 1947, it received, handled and sold an equivalent of 14,821 carloads of all species of edible live stock.

The National Live Stock Producers Association is a co-operative association, composed of nineteen cooperative live stock associations (including the Chicago Producers Commission Association) that are engaged in receiving, shipping, selling and buying live stock on over forty public live stock markets and other points and places throughout

the country. The total annual volume of live stock handled is equivalent to about 150,000 carloads and originates in about thirty-four States.

Through its nineteen member associations, the National represents approximately 350,000 live stock producers in the United States.

The officers and directors of the National and its member associations are live stock producers elected from their various districts of the country in which they reside.

These associations of producers, interveners, here were interveners in the proceedings before the Interstate Commerce Commission and the District Court.

These producer interveners also took an active part in the reopening of *Chicago Live Stock Exchange v. Atchison T. & S. F. Ry Co.*; 219 I. C. C. 531, decided in 1936, in which the terminal charge, in addition to the line-haul rates on shipments of live stock to the Union Stock Yards, that had been the subject of complaints and extensive litigation for over forty years, was finally eliminated, and as a result of the decision in that case the line-haul rates prescribed by the Interstate Commerce Commission in *Livestock—Western District Rates*, 46 I. C. C. 1, were applied on shipments of live stock to the Union Stock Yards without an additional charge.

SCOPE OF THE BRIEF.

It is our purpose to direct our remarks to matters of particular interest and concern to live stock producers and their marketing associations and we rely on a more comprehensive treatment of other pertinent points by counsel for the Government and the defendant railroads.

SUMMARY OF ARGUMENT.

I.

The Union Stock Yard Is the Only Public Live Stock Market in Chicago, It Is the Terminal of All the Railroads and With One Exception the Only Suitable Place for the Delivery of Live Stock.

A concise statement of the early history and development of the present public stock yard appears in *Chicago Live Stock Exchange* case, *supra* (1936), where beginning at p. 533 the Commission said:

"Prior to 1865 there were four different points in Chicago at which live stock was delivered and marketed. The different roads transporting such traffic to Chicago delivered it at any of these points without charge in addition to the Chicago rate. The maintenance of four different markets was found burdensome by the carriers, and in 1865 for the purpose of concentrating these markets at one point, the Union Stock Yards & Transit Company was organized, stockholders in this company being the carriers transporting live stock to Chicago. This company acquired real estate, constructed the Union Stock Yards and railroad tracks connecting the trunk lines entering Chicago with the pens at the yards. Other markets in Chicago were abandoned. Slaughterhouses were located in the vicinity of the Union Stock Yards, and these yards became the sole place in Chicago where live stock was marketed for slaughter" (p. 533).

The Union Stock Yards are the only public live stock yards in Chicago and, with the exception of the plant of the intervener Omaha Packing Company, the only suitable place for the delivery of live stock (541).

II.

The Services Rendered in Delivering Live Stock to the Union Stock Yard and to the Plant of the Appellant's Subsidiary, the Omaha Packing Company, Are Not More Onerous Than Terminal Services Contemplated Under the Scale of Rates Prescribed in the Western Live Stock Case (176 I. C. C. 1).

Appellant's present plant like those of other packers, located adjacent to the Union Stock Yard, is connected with overhead runways, tunnels, and viaducts, that are owned and maintained by the Union Stock Yard and are used to drive live stock from the yards to the slaughtering plants of the various packers, including that of appellant. (*Swift & Co. v. Atchison, T. & S. Fe Ry. Co.*, 274 I. C. C. 557, 563.)

Appellant also receives shipments of live stock at its private stock yard known as the Omaha plant pens, located about two and one-half miles north of the Union Stock Yard. This yard is used only for live stock—there are no slaughtering facilities there—and the live stock received there is transported to appellant's slaughtering plant, a distance of about two and one-half miles, in appellant's trucks.

The same basis of rates applies to the Omaha plant pens of plaintiff as applies to the Union Stock Yard. This is pursuant to a decision of Commission in *Chicago Live Stock Exchange v. Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, where at p. 546 it said in part:

“The services rendered in delivering live stock to the Union Stock Yard, and to the plant of intervener, Omaha Packing Company, at Chicago, as shown by the present record, are not more onerous than ter-

terminal services contemplated under the scale of rates prescribed in *Livestock—Western District Rates*,” (176 I. C. C. 1, decided in 1931).

In *Swift & Company, et al. v. Alton Railroad Company, et al.*, 238 I. C. C. 179 (1938), the Commission said:

“For many years the packers, including complainant, made the practice of which they now complain their own practice. They gave up their own terminal facilities at the Central Stock Yards for a substantial consideration, and, by their covenants with the Yard Company, made the Union Stock Yards their own terminal facilities in Chicago” (p. 188).

III.

There Is Great Dissimilarity Between Delivery of Live Stock at the Union Stock Yard, the Only Public Stock Yard in Chicago, and the Delivery of Live Stock at the Appellant's Proposed Private Stock Yard.

The following points are representative, but not all inclusive, of the differences in the facts and circumstances and conditions incident to the delivery of live stock at the Union Stock Yard as compared with the delivery of live stock shipments to the appellant's proposed private stock yard that were considered by the Commission and are based on substantial evidence of record.

Delivery of live stock shipments at the Union Stock Yard:

For over eighty years all live stock shipments have been delivered by the engines and crews of the line-haul carriers direct to the yards. (274 I. C. C. 557, 569.)

Both the yards and service were specially designed to facilitate expeditious handling of live stock shipments. (Defendant's Exhibit 42.)

Assures immediate return of empty cars.

Provides capacity and facilities to handle a large volume in the shortest possible time.

Service no more onerous than that contemplated by Commission in *Livestock—Western District Rates*. (176 I. C. C. 1.)

Western Livestock scale of rates was prescribed by Commission for delivery of live stock shipments at the Union Stock Yards.

The Union Stock Yards is the only suitable place for delivery of any appreciable volume of live stock in the Chicago area, with the exception of the Omaha Stock Yards operated by appellant. (219 I. C. C. 531.)

Delivery of live stock shipments at appellant's proposed private stock yard:

Carload shipments of live stock would have to be switched and otherwise intermingled with dead freight.

Would make expedited handling and delivery of live stock to appellant's proposed private yard extremely difficult on account of complex switching operation through a congested terminal area.

There is no room for expansion of yards or the building of additional transportation facilities.

Appellant's proposed private stock yard is served only by the Junction (a switching road) and subject to a switching charge.

Appellant's proposed private stock yard is inaccessible to line-haul carriers.

Would interrupt service to the public stock yard on account of necessity to stop consolidated trains to set out cars on a switch track for delivery to proposed private stock yard.

Would cause delay due to special handling required to place live stock shipments on set out track for subsequent movement to appellant's proposed private stock yard.

Would cause delay on account of operating difficulties encountered in moving empty stock cars from proposed private yard to the tracks of the line-haul carriers.

Would delay delivery of market live stock and the delivery of direct shipments moving to the public stock yard and require unloading of live stock for feed, water, and rest under the Federal 28-36 hour law.

Would compel lengthening of train schedules which would require earlier loading at country points, and result in extra charges incident to unloading live stock for feed, water and rest.

Would cause interference and delays to shipments of live stock consigned to the Union Stock Yards and the return of empty cars as well as the handling of dead freight for other industries in the switching district.

The following are other significant points bearing on the difference between delivery at the Union Stock Yard and delivery at appellant's private yard, namely:

Ordinary live stock is never handled in switching service, except in case of emergency and has been always subject to a switching charge.

Line-haul rates into Chicago do not include delivery to appellant's proposed private sidetrack which is located on a switching line.

Junction has no facilities for such resting, watering, and feeding live stock on its lines as may be required by Federal law.

Would require a new kind of service.

Delivery at appellant's proposed private stock yard is not adapted to the Junction's tracks and other transportation facilities because these were designed and developed for centralized delivery by the line-haul carriers at the Union Stock Yard.

Other packers would be under a competitive compulsion to make similar demands if appellant's demands were granted. *Swift & Company v. A. T. & S. Fe Ry. Co., et al.*, 274 I. C. C. 557-573.

BRIEF AND ARGUMENT.

I.

The Union Stock Yard is the Only Public Live Stock Market In Chicago. It Is the Terminal of All the Railroads and With One Exception the Only Suitable Place For the Delivery of Live Stock.

For over eighty years the Union Stock Yards has been the sole place in Chicago where live stock for slaughter has been handled in any appreciable volume. The only exceptions to this are the Omaha Yards (appellant's private yard before mentioned) and few isolated shipments at team tracks of some of the carriers (R. 163, 360, 888).

The consequences of appellant's proposal would seriously interfere with shipments of live stock consigned to the public market at the Union Stock Yards, and shippers of other freight would also be affected (R. 503, 1229-30).

Testimony of Producers.

Mr. David Swanson, Manager of the Chicago Producers Commission Association who has had many years of experience on the Chicago market, testified to the effect that there were four main classes of buyers, including the big packers, small local packers, order buyers and traders. He described the function of salesmen representing live stock producers, and the function of buyers for the various packers and other interests in the determination of prices. He stated that all buyers must always be forced to give all they can afford (R. 855); that it is important that live stock arrives on the market early so that there is ample time for proper resting, feeding, watering and

sorting, before the salesmen start to show them to the buyers; that the most important thing is to give the live stock producer access to all the markets, the early market, the middle market and the late market of the day (R. 859); that it is in the interest of live stock producers to have an effective live stock market at Chicago. The Chicago market must have high volume and sufficient action in order to determine fair live stock prices for those sending live stock there and also to be used as a guide throughout the entire live stock industry. The stabilizing effect of the Chicago market is a benefit to consumers, as well as producers and processors. Anything done to decrease volume to the Chicago market and slow up its action would be detrimental to the public interest (R. 859).

Mr. Theodore Funk, President of the Chicago Producers Commission Association and Vice President of the National Live Stock Producers Association, a farmer and live stock feeder in Illinois, whose ancestors brought live stock to Chicago before it was an organized market, and with the railroads and other interests played a prominent part in bringing about the establishment of one central public live stock market, and the abandonment of the other separate live stock markets in Chicago, testified that the central live stock market at the Union Stock Yards in Chicago has been in continuous operation since it was organized, that interference or disruption of the service would tend to decrease volume, and that this would have a detrimental effect on the interests of live stock producers; that a market to be effective has to have a large volume, that if volume is decreased substantially, buyers will look elsewhere for their live stock, and that the presence of more buyers results in obtaining the best price that conditions warrant, that time in transit bears directly upon the net returns that any producer will get from his live stock because the less time that it takes for the live

stock from the time it leaves the producer's feed yard until it is over the scales and sold, the greater will be his total weight and his net returns, that the sooner live stock can be unloaded after they reach their destination the better appearance they will have, the more bloom they will carry, and the less weight they will lose. Especially is this true in the summer time when it is extremely hot, or in the winter time when it is cold. As long as live stock are moving they do not suffer as much, but when they have to stand in a car on track before being unloaded, that is where your greatest loss takes place, that lengthening of time in transit would divert a tremendous amount of live stock, especially if the delay was such that they had to feed these animals enroute, that on shipments made where the cattle have to be unloaded and fed the shrink amounts to practically twice as much as when they can get through without an unloading enroute (R. 796-801).

Testimony of Operating Witnesses.

There is abundant and uncontroverted testimony of operating officials and representatives of the defendant carriers which conclusively shows that granting of the plaintiff's request would seriously disrupt and interfere with the services in connection with the handling of live stock at the Union Stock Yards. Mr. Sorenson, Superintendent of the Chicago Junction Railway, testified on this point in part as follows:

"In my considered opinion, based on my twenty years' experience in the operating end of the railroad industry, all of which time has been spent in terminal yards, if the Chicago Junction Railway was forced to handle direct shipments of live stock for delivery to private siding of the packing companies located on our rails, the net result would be the complete breakdown of the operation of the Chicago Junction Railway" (R. 457).

Extensive similar testimony relating to the present operating practices, and the interference, delay and congestion that would result if plaintiff's request was granted, was given by operating witnesses of the line-haul carriers (R. 455, 571, 615, 617, 619, 684 and 685).

The major part of the live stock shipments coming into the Union Stock Yards by rail must pass through the Ashland Avenue Yard of the Chicago Junction Railway. The operations of this yard are complex and congested, as both inbound and outbound traffic to and from various industries in the area are handled through it and twenty-two line-haul carriers must interchange traffic within the confines of that yard and this includes all cars of dead freight and perishables consigned to and by industries on the Junction tracks. It should be observed that never before, except in isolated emergencies, has live stock traffic, consigned to the Union Stock Yards, been handled by the Chicago Junction Railway. Rail shipments of live stock have been handled into the yards by engines and crews of the line-haul carriers for over eighty years (R. 355-360).

Granting of the plaintiff's request would require the setting out of shipments consigned to its proposed private yard and subject this highly perishable class of traffic to the unavoidable delay amidst congestion and other consequential complications that would result. The operation through the Ashland Avenue Yard under present conditions is not without interference, as a substantial number of the stock trains going to the yards are held up and required to wait on the main running tracks (R. 590, 614, 617, 619, 684).

Granting of the plaintiff's request would also make it necessary for line-haul carriers to use additional engines because of the more frequent runs that would be necessary. Furthermore, its operating witnesses testified that there just are not enough engines and crews to go around now;

if we have this greatly increased number of cars to be classified, it is going to make matters much worse (R. 662).

Any additional engines and men necessary to handle the live stock to the private yards of the plaintiff's would also materially retard the handling of dead freight and perishable freight, (R. 657).

Additional delays and other interference in the handling of live stock in the Ashland Avenue Yard would lead to other detrimental consequences.

Live stock shipments by rail are subject to what is known as the Federal 28-36 Hour Law. This law requires live stock to be unloaded for feed, water and rest for a minimum of five hours in the event that it cannot be delivered within the time limitations prescribed by the law.

To live stock producers the loading time in the country and the arrival time at the market are very important. Train schedules for many years have been established to meet the limitations of this Federal law. Many of them provide only a slight margin based on current operating experience and any substantial delay would jeopardize the movement of live stock and would inevitably require a readjustment of the schedules by appropriately lengthening them or otherwise compel the unloading of live stock for feed, water and rest in accordance with the law. This would seriously affect the interests of all shippers of live stock, by rail to Chicago whether they were moving to the Union Stock Yard—consigned to the public market for sale or direct to packers. On shipment consigned for sale it would result in added shrink, added expense, and deterioration in the marketable condition of the live stock, all of which would be detrimental to the interests of the producers.

As a consequence of the lengthening of the schedules and

the detriments incident to the additional delays, rail live stock traffic would be diverted to the trucks (R. 801).

To handle live stock shipments to the complainant's proposed yard adjacent to the public stock yards, it would be necessary for the line-haul carriers to make many more runs to avoid violation of the 28-hour law (R. 563, 591, 592).

The prompt return of empty stock cars is of great importance to both live stock producers and carriers. The proposed operation would not only cause serious delay in the handling of the loaded cars, but also seriously delay the return of empty stock cars. It is reliably estimated by a railroad operating witness of long experience that the return of empties would require at least a 24-hour delay and this is in sharp contrast to the prompt return of empty cars from the unloading chutes at the Union Stock Yard by engines and crews of the line-haul carriers (R. 457, 662).

Diminished receipts on the public live stock market at Chicago would tend to increase the yardage charges that would be borne by the producers and others using the facilities of the Union Stock Yards & Transit Co. (R. 499, 509).

There are thirteen or more other live stock slaughterers with plants in what is commonly called the Chicago stock yards area (Rec. 122). These and others are in competition with the appellant. Consequently, the Commission did not consider the matter as a request of only one packer, and we contend properly so.

II.

The Services Rendered In Delivering Live Stock to the Union Stock Yard and to the Plant of the Appellant's Subsidiary, the Omaha Packing Company, Are Not More Onerous Than Terminal Services Contemplated Under the Scale of Rates Prescribed in the Western Live Stock Case (176 I. C. C. 1).

The Chicago Terminal Case.

About fifteen years ago the Commission had before it the *Chicago Live Stock Exchange* case, 219 I. C. C. 531, *supra*, decided in 1936. In that proceeding the application of the line-haul rates without the imposition of a terminal charge was sought. The terminal charge then imposed in addition to the line-haul rates was the subject of bitter complaint on the part of various live stock producer interests from time to time for a period of about forty years. A very complete record of operating conditions and other facts and circumstances was presented in that case by the parties seeking the elimination of the terminal charge.

The following extracts from the Commission's decision in that case in which it condemned the terminal charge and required the application of the line-haul rates without an additional charge are rather significant in connection with the consideration of the Commission's decision under attack here.

A concise statement of the early history and development of the present public stock yard appears in *Chicago Live Stock Exchange* case, *supra* (1936), where beginning at p. 533 the Commission said:

"Prior to 1865 there were four different points in Chicago at which live stock was delivered and marketed. The different roads transporting such traffic

to Chicago delivered it at any of these points without charge in addition to the Chicago rate. The maintenance of four different markets was found burdensome by the carriers, and in 1865 for the purpose of concentrating these markets at one point, the Union Stock Yards & Transit Company was organized, stockholders in this company being the carriers transporting live stock to Chicago. This company acquired real estate, constructed the Union Stock Yard and railroad tracks connecting the trunk lines entering Chicago with the pens at the yards. Other markets in Chicago were abandoned. Slaughterhouses were located in the vicinity of the Union Stock Yards, and these yards became the sole place in Chicago where live stock was marketed for slaughter" (p. 533).

"Most of the trunk lines entering Chicago have direct connections with the Chicago Junction, and their road engines operate into the stockyards, although the crews are frequently changed at the break-up yards as the trains pass through, in instances where the matter of overtime pay is involved. The train proceeds to an unloading platform, the engine cuts loose and, proceeding to the rear, removes the caboose and places it at what was the head of the train. Then, proceeding to the other end, it is ready to remove the empty cars. The unloading is very expeditious as the stockyards now have dock capacity for setting 283 cars of live stock for unloading at one time. Each chute has capacity for two carloads of live stock, so that the first 283 cars may be removed when empty, and 283 more carloads set immediately. The trains placed at the chutes may contain hogs, cattle, or sheep, in single-deck or double-deck cars, or short cars with long cars, yet only one spotting is necessary to take care of the whole trainload. In other words, no further "cutting" or "spotting" is necessary because of different species of live stock or types or size of cars" (p. 538).

"The services rendered in delivering live stock to the Union Stock Yard, and to the plant of intervenor Omaha Packing Company, at Chicago, as shown by the present record, are not more onerous than ter-

terminal services contemplated under the scale of rates prescribed in *Livestock-Western District Rates, supra.*

"In prescribing the rates in *Livestock-Western District Rates, supra*, we specifically took into consideration as an element the rendition of terminal services in connection with the transportation of live stock, and included what we considered sufficient to cover such terminal services under a normal operation, as well as to cover the unloading and loading of live stock at public stockyards" (p. 546).

The Commission in its decision in the *Chicago Live Stock Exchange* case, *supra*, concluded with the following significant statements:

"In the case of live stock, the terminal operations are in many respects simpler and less expensive than those required by other classes of freight. The railroads do not hold themselves out to deliver at all points within the Chicago switching district, but, as the majority report shows, at practically only two points, by far the most important of which is the Union Stock Yard.

"The Union Stock Yard is, in effect, the terminal of all the railroads, and they reach it with their own rails. That is to say, they do not depend upon the Chicago Junction Railway for switching service, but have trackage rights over it, operating to and from the stockyards with their own engines and crews. They pay a charge for these trackage rights, but it is in lieu of the capital charge to which they would be subject if they owned the rails themselves. We have never had occasion to pass upon this trackage charge, and for its level the railroads are themselves responsible (p. 550).

"As shown by the majority report, the concentration of the traffic to this point of delivery, the Union Stock Yards, together with the trackage rights, makes operating conditions very favorable in important respects. In general, the trains are hauled through to the stockyards without the classification at, and switch-

ing service from, the break-up yards which is usually necessary at other cities. Unloading and removal of the empty cars can be accomplished in exceptionally quick time. All of this tends to reduction in terminal expense (p. 550).

"As a matter of fact, as above stated, the Union Stock Yards is a point of live stock delivery for all the lines and it is, through the trackage rights, in effect located on their own rails" (p. 551).

III.

There Is Great Dissimilarity Between Delivery of Live Stock At the Union Stock Yard, the Only Public Stock Yard In Chicago, and the Delivery of Live Stock at the Appellant's Proposed Private Stock Yard.

The Present Case.

It appears that there never was a case, with the exception of the *Chicago Live Stock Exchange* case, *supra*, where more evidence was presented relating to the operating conditions and transportation services in the stockyard area, and considered more carefully by the Commission than in this case.

That the facts, circumstances and conditions that generally prevailed at the time of the *Chicago Live Stock Exchange* case still exist today and the effect of appellant's request if granted, is shown by the lengthy discussion by the Commission in its report in the case on appeal here, 274 I. C. C. 557, *supra*, of which the following excerpts are representative:

"At present, approximately 63 percent of the trains of the trunk lines going to the Union Stock Yards handle live stock exclusively. Solid trains of live stock entering the stockyard area from the west are handled by the line-haul carriers over eastbound track

1103 to the unloading chutes in the Union Stock Yards. No separation is required of live stock by species to make delivery at particular pens. While the cars are being unloaded, the engine cuts off, passes around the train, and couples on to the other end. The unloading operation consume but a few minutes a carload."

Further discussion of the existing facts, circumstances and conditions and consideration of the effect that the granting of the plaintiff's request would have on the situation, appears throughout the Commission's report as indicated by the following:

"We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays" (p. 569).

"Complainant does not dispute, but instead concedes, that the other packers, if providing the necessary facilities therefor, would be entitled to the same delivery service at the same rates as accorded it. What it urges is that the carriers' contention as to additional burdening and disruption of their operations because

of demands for the service from other packers rests on an untested assumption or conjecture, and would thus require us to decide the case, not upon facts, but upon prediction, opinion and prophecy.

"But the very nature of complainant's complaint, asking, as it does, that defendants be required to render for its proposed plant a delivery service of a kind new to the stockyards district, necessarily requires exercise of judgment as to future effects and results. The record contains ample facts showing that, if complainant's demand for the service without charge in addition to the line-haul rates were granted, the other packers would be under considerable, if not great, competitive compulsion to provide the necessary facilities enabling them to make like demands. We may take account of, and give effect to, such conditions without being definitely apprised as to what each and all of the other packers will do, or will find it financially profitable and otherwise advantageous to do" (p. 572).

"Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. It is the position of these interests that deliveries of livestock on private industrial tracks served by the Junction should be condemned upon the ground that such disposition of livestock is contrary to the public interest.

We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally" (p. 573).

"The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought" (p. 574).

"There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred" (p. 575).

"The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of live-stock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant" (pp. 575, 576).

Delay Would Lengthen Time in Transit and Would Otherwise Be Detrimental to Producers and Others Shipping Live Stock to Chicago.

Loading time at country shipping points is determined by present operating schedules, including the delivery of live stock by the line-haul engines and crews direct to the unloading docks at the public stock yard, and the limitations of the Federal law relating to the time live stock may be confined in cars without unloading for feed, water and rest.

For delivery at the private side tracks additional time would have to be allowed.

Delay due to interference would compel lengthened schedules and compel live stock producers to load earlier for arrival on the intended market day and bear the burden of added shrink, depreciation in the marketability of the live stock and the added expense incident to unloading of live stock enroute for feed, water and rest.

In *Swift & Company v. Atchison, T. & S. F. Ry. Co.*, supra 274 I. C. C. 557, the Commission said:

"Under the Federal law, livestock may be confined in

cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line. That carrier contends that if it should attempt to switch livestock to private delivery tracks an additional 1 to 8 hours would be required before cars could be set for unloading. Accordingly, it is contended that the line-haul carriers would have to allow the Junction at least 8 hours after interchange within which to effect delivery to the industry and where there was not sufficient time to make delivery within the period prescribed by law, the line-haul carriers would be compelled to unload the stock on their rails or rearrange their train schedules. In this connection, it is shown that, while livestock arrives at all hours, the bulk of the traffic is consigned so as to make the early morning market. The market period extends to 2 p. m. each day but as a practical matter trading is over about 11 a. m. Late arrivals must often be carried over, resulting in some depreciation, as well as added costs for feeding and handling" (274 I. C. C. 562-563).

Complainant Has Available Use of Facilities at Union Stock Yard Same as Other Packers in the Stock Yard Area.

Appellant has also available facilities for receiving live stock at its plant at the Union Stock Yard same as other packers in the stock yard area, whether such live stock consists of direct shipments or of live stock that complainant may purchase out of consignments on the open public market at the yard.

The owners of the live stock pay the yardage charge and other marketing costs on live stock sold on the market and the appellant and other packers are obliged to pay charges for use of the yards and facilities provided by it for delivering the live stock to their plants.

In the decision on appeal here the Commission continued:

"At present the Junction connects at Ashland Avenue with private tracks serving complainant's present plant which is in the northern section of an area known as "Packingtown", located just west of the Union Stock Yards. That connection would be used in reaching complainant's proposed unloading facilities for direct shipments of livestock. The Junction also serves numerous other packing plants in the packinghouse district which is bounded on the west by Ashland Avenue, on the south by Forty-seventh Street, on the east by Racine Avenue, and on the north by Thirty-ninth Street. This area is connected with the Union Stock Yards by a network of overhead runways, tunnels, and viaducts which are owned and maintained by the Union Stock Yards and used to drive livestock from those yards to the slaughtering floors of the packers, including complainant" (274 I. C. C. 563).

"Complainant's counsel objected to the receipt in evidence of an exhibit containing copies of agreements and other documents relating to certain events which gave rise to the present practice of delivering live-

stock to the Union Stock Yards and showing that this practice was inaugurated in 1867 when the Union Stock Yards were constructed to displace four widely separated stockyards which had proved unsatisfactory to the railroads and to the livestock industry, and indicating that in 1892 complainant, or its predecessor, and other packers acquiesced and concurred in that development of the terminal practices and facilities for the handling of livestock at Chicago. The objection was overruled and the exhibit was received. After the hearing, complainant filed a memorandum in support of a motion to exclude the exhibit from evidence as being irrelevant to the issues. All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant. The motion is denied" (274 I. C. C. 567-568).

A Granting of Appellant's Demand Would Seriously Deteriorate Live Stock Service at Chicago.

Present long established method of delivering all shipments of live stock at the stock yards by engines and crews of line-haul carriers, leaving the Junction to perform the switching and spotting of other freight for the packers and many other industries serves the needs of all interests best. Any change, particularly delivery of live stock to side tracks at plants of the complainant and other packers would result in interference and delay not only in the delivery of live stock at the stock yards, but also the delivery at the private side tracks of the complainant and the side tracks of any other packers in the area.

In this connection the Commission stated:

"We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to

defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of live-stock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays" (274 I. C. C. 569).

A Centralized Place of Delivery at Chicago Serves All Interests to Best Advantage.

Conditions and circumstances require prompt handling of live stock shipments. It was long recognized that delivery of the shipments of all live stock at one centralized place would serve all interests—live stock producers, packers, and the railroads.

As to the advantages of centralized delivery compared with the plant delivery sought by appellant, the Commission said:

"As above mentioned in practically all cases, live-stock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating prompt handling of the

traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours” (274 I. C. C. 570-571).

“Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants’ operations. Moreover, although it is shown that complainant’s direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant’s direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant’s witnesses affords ground for the belief that that condition will continue” (274 I. C. C. 571).

The Decision In Cleveland Case Not Applicable Here.

Appellant’s counsel is trying to make this case appear to be like the so-called Cleveland case, *Swift & Company v. Baltimore & Ohio Railroad Company, et al.* (266 I. C. C. 55, and *United States of America, Interstate Commerce Commission and Swift & Company, appellants v. Baltimore and Ohio Railroad Company, et al.*, 333 U. S. 169, 92 L. Ed. 618 (1948).

The two cases are definitely different and not comparable.

In the *Cleveland* case the fundamental point in the controversy was that the Stock Yard Company sought to

change a long established custom and practice at the plant of the complainant at Cleveland. This the Commission refused to permit and its position was sustained by the Supreme Court.

Here it is a packer that seeks to change the established practice and the Commission has found the existing practice to be reasonable and lawful exactly as it found the practice complained of at Cleveland, to be reasonable and lawful. In this case the appellant relies upon the refusal of the Commission to change the customary delivery practice at Cleveland to contradict the Commission's refusal to change the customary delivery practice at the Union Stock Yard at Chicago.

In the *Cleveland* case, the rail carriers had made plant door delivery of live stock to the packers since the turn of the century. It is very significant that at a time while the appellant and other packers in Chicago were instrumental in getting live stock delivered at the public stockyards in Chicago, because the appellant was one of the proprietors in that enterprise, live stock was being delivered at the public stock yard and at the packers' plants in Cleveland, so that operations in the Cleveland area were developed on that basis and were geared to that method of delivery just as at Chicago they were developed and geared to a different method of delivery.

Accordingly the Commission found that the linehaul live stock rates established by it to Cleveland contemplated and covered that type of delivery, while the Commission found that the line-haul rates which it had established to Chicago do not contemplate or cover the delivery of live stock to the private side track at the appellants' proposed private stockyard.

In the *Cleveland* case the railroads were ready and willing to continue the customary service at Cleveland, but the Yard Company there that owned a part of the track

running to the Swift plant tried to prevent its use for delivery of live stock shipments to the plant.

That was the sole reason advanced for a change in the established practice. The Commission in *Swift & Co. v. B. & O. R. Co.*, *supra*, at page 69, said in part:

“The only reason advanced for the failure to perform such service is the question as to the New York Central’s right to use its spur for the delivery of livestock because of its contract with the stockyards respecting the use of track I619.”

In the *Cleveland* case the Commission and the Supreme Court both held that private contracts could not be used to justify a change in the customary service which railroads were being paid to perform.

In this case no such defense nor contention is made by anyone. Appellant in an attempt to obtain some benefits from the *Cleveland* decision as to itself put in the record the terms of an old agreement between the Union Stock Yards & Transit Co. and the Junction. This is nothing more than an attempt to bring in an issue that does not exist in this case.

The Commission made a very clear distinction between the circumstances and conditions relating to delivery of live stock to private industrial tracks (in *Baltimore Butchers Abattoir & Live Stock Co. v. Philadelphia B. & W. R. Co.*, 20 I. C. C. 124, by the Commission, *Swift & Co. v. Baltimore & O. R. Co.*, 266 I. C. C. 55, by the Commission, and *Neuhoff Packing Co. v. Louisville & N. R. Co.*, 268 I. C. C. 271), by division 3, in which refusal to make deliveries without an additional charge to the line-haul rates was found unlawful and the circumstances and conditions at the Union Stock Yard in Chicago in this case where at page 575 it stated:

“Deliveries to private industrial tracks at those points did not require substantial modification of ter-

minimal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

Furthermore, there is no contract here that prevents the Junction from delivering shipments of live stock at appellant's proposed private stock yard or on a private side track of any other packer in the Chicago area, located on switching line. The situation here is due to a difference in transportation conditions that have been in existence for over eighty years and acquiesced in by appellant.

Granting of appellant's request would completely disrupt and destroy the efficiency and other benefits of a centralized system for the delivery of live stock shipments at the Union Stock Yard, that has been maintained continuously for over eighty-seven years. Obviously, it would be against the public interest to subject all other shippers of live stock to Chicago to the disruption of service, the lengthening of train schedules, and the burden of other inconveniences and expenses, in order to grant a selfish demand.

Appellant Failed to Sustain Burden of Proof in Support of the Allegations in Its Complaint.

The appellant has not only failed to sustain the burden of proof that the switching charge in addition to the line-haul rate for delivery of live stock at its proposed private stock yard is unjust and unreasonable under Section 1 of the Interstate Commerce Act, but it also failed to prove that there is any semblance of similarity in circumstances or con-

ditions necessary to sustain the Section 3 allegation in its complaint.

The fact is that the evidence overwhelmingly shows a great dissimilarity on a substantial number of points with not a single point of similarity whatsoever.

It is appropriate to state again that since 1865 (over 87 years ago) the present stock yards and the adjacent packing plants were constructed the whole development was directed along a plan for centralized delivery of rail shipments of live stock at the Union Stock Yard and has been continuously maintained up to the present time.

Uncontroverted evidence of record clearly shows that delivery of live stock shipments to appellant's proposed private stock yard would involve many complications wholly detrimental to proper and safe handling of live stock and interfere with and seriously disrupt the delivery of shipments of live stock to the Union Stock Yard.

In view of this it is apparent that there is no substantial similarity of circumstances and conditions between the delivery of live stock shipments to the Union Stock Yard and the delivery of live stock to the appellant's proposed private stock yard.

It should be observed that in *Hygrade Food Products Corporation v. Atchison, Topeka and Santa Fe Railway Co.*, 195 I. C. C. 553, decided in 1933, the elimination of both yardage charges and switching charges on direct shipments was sought. The Omaha Packing Company (a wholly owned subsidiary of appellant) intervened against the complaint because of an allegation that the Omaha Packing Company, a competitor of complainant, was unduly preferred by reason of the fact that the switching charges demanded for placement of carloads of live stock at complainant's plant were inapplicable for delivery of carload shipments of live stock to the plant of the Omaha Packing Company.

The intervener (subsidiary of appellant here) strenuously opposed the complaint.

Defendants refused to provide delivery of live stock at complainant's plant at the same rates and charges that applied on live stock delivered at the Union Stock Yard or at the plant of the Omaha Packing Company.

The Commission held, among other things, that there was no indication of substantial similarity in circumstances and conditions connected with delivery at complainant's plant and the delivery at the plant of the Omaha Packing Company.

That finding was not brought before this Court on subsequent appeal. *A. T. & S. Fe Ry. Co. v. United States*, 295 U. S. 193.

Appellant now demands the very same thing that it so strenuously and successfully opposed in the *Hygrade* case. It wants delivery of live stock at its proposed private stock yards at the line-haul rates without additional charge, same as in deliveries to the Union Stock Yard and the Omaha Packing Company, to each of which the line-haul rates apply today.

Appellant seeks to relieve itself of the cost of trucking the live stock from its Omaha Packing Company yard, where there are no slaughtering facilities, to its slaughtering plant adjacent to the Union Stock Yard, and it also wants to relieve itself of the switching charge in addition to the line-haul rate for delivery of live stock to its proposed private stock yard.

In other words, it wants to eat its cake and have it too.

At its Omaha yard appellant has, among other things, the advantage of delivery of rail shipments at the line-haul rates without any additional charge, but it has the disadvantage of having to truck the live stock some 2½ miles to its slaughtering plant adjacent to the Union Stock Yard.

By delivery of live stock at its proposed private stock yard it would eliminate the expense of trucking from its Omaha yard, but it would have one disadvantage, that it cannot overcome and that is on account of its proposed private yard being located on a switching line, and not on the rails of a line-haul carrier as it is at the Omaha yard.

In avoiding any disadvantage peculiar to one location appellant must assume any inherent disadvantage along with any advantage of another location.

Appellant has failed to prove that it is entitled to relief from the switching charge in addition to the line-haul rate in the delivery of shipments at its proposed private stock yard.

In any event, it would be most unfair and against the public interest if appellant's demand was granted to the disadvantage and detriment of others.

Proof of any substantial similarity in circumstances and conditions is lacking; on the contrary, evidence of dissimilarity is overwhelming.

CONCLUSION.

We respectfully submit that the decision of the Commission, unanimously affirmed by the District Court is supported by substantial evidence of record; that it otherwise is within the proper exercise of the powers conferred on it by the Congress, that it is in the public interest and that this Court should "ascribe" to its findings "the strength due to the judgments of a tribunal appointed by law and informed by experience". *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541, 56 L. Ed., decided 1912, citing: *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S. 470, 54 L. ed. 287, 30 Sup. Ct. Rep. 155; *Southern P. Co. v. Interstate Commerce Com-*

mission, 219 U. S. 433, 55 L. ed. 283, 31 Sup. Co. Rep. 288; *Interstate Commerce Commission v. Northern F. R. Co.*, 216 U. S. 554, 54 L. ed. 609, 30 Sup. Ct. Rep. 417; *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S. 146, 174, 42 L. ed. 414, 425, 18 Sup. Ct. Rep. 45, and *Illinois C. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700.

WHEREFORE interveners urge that the final decree and order of the District Court be affirmed.

Respectfully submitted,

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